



SOCIAL SECURITY
Office of the Inspector General

April 5, 2012

The Honorable Sam Johnson
Chairman, Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
B-317 Rayburn House Office Building
Washington, D.C. 20515

Attn: Kim Hildred

Dear Chairman Johnson:

This is in response to your letter dated March 22, 2012, in which you requested information related to the Social Security Administration's (SSA) distribution of death data and personally identifiable information, following your Subcommittee's February 2, 2012 Hearing on Social Security's Death Records. I appreciate the opportunity to provide information related to this critical issue. Below are responses to your specific questions.

- 1. The Social Security Administration (SSA) is only required to enter the name, the Social Security number and the date of death on the Death Master File, according to the court settlement. However, the SSA includes other information, including date of birth and zip code. You have recommended that the information not required under settlement be removed. However, the Commissioner says he tried to remove the zip code data, and that only resulted in a *Freedom of Information Act* (FOIA) request to release the data anyway. The Commissioner indicated the SSA Office of the Inspector General (OIG) might be confused on this issue. Can you speak to that remark? Is there any way the agency can remove this data without being in violation of FOIA? Is there the possibility of re-opening the Perholtz decision?**

The consent agreement that established the Death Master File (DMF) required SSA to provide only the decedent's last name, Social Security number (SSN), and date of death. Since that time, SSA expanded DMF information to include the individual's first and middle name, date of birth, residential state and zip code. Effective November 2011, SSA removed the decedent's residential and state zip code information from subsequent DMF publications.

During our audit completed in June 2008, Agency officials explained that SSA expanded the amount of information included in the DMF based on DMF subscriber requests. However, we

could not confirm this because SSA could not provide any documentation to support their assertion.

We recommended that SSA limit the information included in the DMF version sold to public customers to the absolute minimum required, and explore alternatives to inclusion of the full SSN. Agency officials stated they would consider implementation of this recommendation.

During our follow-up audit completed in March 2011, SSA officials stated the Agency decided not to implement our previous recommendation at the suggestion of its DMF Task Force. According to SSA officials, DMF Task Force members believed there was a strong likelihood of litigation under FOIA if SSA were to reduce the amount of information on the DMF. At the time of completion of our second review, we were not aware of any attempts by SSA to reduce the amount of information published in the DMF. We are not aware of any FOIA litigation on the subject.

Although we may share a different perspective from the Commissioner on exclusion of data from the DMF that is not mandated for disclosure by the *Perholz* Consent Judgment, I can assure you that we are not confused on this issue. I understand the Commissioner's point to be that while *Perholz* itself only required certain data to be included in the DMF, the additional information that the Agency voluntarily includes in the DMF is also obtainable under the FOIA; so excluding the information from the DMF is an exercise of questionable value given the likelihood of litigation. We disagree.

We believe that absent a legal requirement to include this additional information in the same public file as other court mandated¹ disclosures of personally identifiable information (PII), such information should not be voluntarily disclosed because doing so, regardless of the possibility of a subsequent FOIA request for the information and related litigation, makes misuse of identities easier for identity thieves. Secondly, there is no guarantee that a FOIA requestor would be guaranteed success in litigating for disclosure of information no longer part of the DMF.

Third, we know from our prior audits that some of the information in the DMF pertains to living individuals. To the extent the DMF erroneously contains identifying information about living individuals permitted to be withheld under FOIA as an unwarranted invasion of personal privacy, the Privacy Act mandates withholding such information. Therefore, at a minimum, there is some degree of uncertainty whether a court would rule in favor of a blanket FOIA request for additional information about all individuals listed in the DMF when the DMF continues to include living individuals. Further, information pertaining to living individuals was clearly not part of the 1980 Consent Judgment. While we recognize that this concern may be alleviated if SSA is able to ensure that all individuals listed in the DMF are in fact deceased, at this point we do not believe this is the case.

Legislation, of course, would render the above noted differences in perspectives on disclosure moot, and is the most viable means of protecting this information.

¹ Pursuant to the *Perholz* Consent Judgment.

In response to the last part of your question, my Counsel tells me that it would be futile to attempt to re-open *Perholtz*, now decades old. Rule 60 of the Federal Rules of Civil Procedure requires action no more than one year after entry of judgment or within a reasonable period of time, depending on the circumstances. Further, even if SSA were successful in amending the Consent Judgment, there is no guarantee that the District Court would modify the Consent Judgment in a way that would restrict access to the DMF, and SSA could be subjected to numerous lawsuits asking for the release of the DMF records under FOIA, which could result in another court order requiring the release of such records.

- 2. In your testimony you discuss reports the IG has done on personally identifiable information made available to the public and your recommendations to the SSA to protect that information. Among your recommendations was for the SSA to notify individuals whose information was incorrectly released on the Death Master File. It is my understanding that the SSA does not notify all individuals whose information has been incorrectly released. Could you tell us more about your recommendations and your thoughts on why SSA has not implemented them? I have also asked Mr. Astrue about a situation I recently learned about in North Dakota. This person was notified that his death had been wrongly reported by the Department of Veterans Affairs (VA) and that his personal information has been put on the Internet. The VA caught the error and notified the individual. Could the SSA use a similar process to the VA's to notify affected individuals so they can take steps needed to protect their personal information?**

Our 2008 report included two recommendations specifically addressing this issue. We recommended that SSA:

1. Initiate OMB-required breach-notification evaluation procedures upon notification that SSA mistakenly included living individuals' PII in the DMF.
2. Provide appropriate notification, as determined by applying OMB guidance, to living individuals whose PII was released in error, and advise them to take appropriate steps to prevent further compromise of their personal information.

In their response to our recommendations, Agency officials stated the number of death-reporting errors was small, and they expressed their concern with our characterization of these death-reporting errors as "PII breaches." Agency officials further stated that to the best of their knowledge, no case of fraud or abuse had occurred because of the DMF reporting errors. Nonetheless, SSA agreed to take a cautious approach and initiate breach-notification evaluation procedures in accordance with OMB guidance. SSA formed a task force that would assess Agency notification and remediation practices under OMB guidelines.

In late 2008, SSA hired a contractor (IDAnalytics) to perform risk analysis on about 27,000 individuals whose PII was erroneously included in the DMF. The contractor continues to perform this risk analysis on a continuing basis. According to SSA, as of November 2011, the contractor had not identified any victims of "organized misuse." As a result, SSA considers these cases "low risk situations" and has determined it was not necessary to provide notification

to any of the individuals whose PII was erroneously published in the DMF. SSA stated that if, in the future, the contractor identifies any individual who has been the victim of misuse, SSA will notify the individual and offer credit monitoring to them.

With regard to your question of whether SSA could implement a process similar to VA for notifying individuals when their PII is erroneously published in the DMF, yes, SSA could implement a similar process.

Thank you for the opportunity to address these issues. I trust that I have been responsive to your request. If you have further questions, please feel free to contact me, or your staff may contact Misha Kelly, Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pat. P. O'Carroll, Jr.", written in a cursive style.

Patrick P. O'Carroll, Jr.
Inspector General